

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 4897 of 2020

With

WPA No.7467 of 2020

IA No: CAN 1 of 2020

Newaz Sharif

Vs.

The State of West Bengal and others

For the petitioner	:	Mr. Soumen Dutta, Mr. Subhadeep Chatterjee
For the State in WPA 4897 of 2020	:	Mr. Ashim Kumar Ganguly, Mr. Bellal Shaikh
For the State in WPA 7467 of 2020	:	Mr. Sirsanna Bandyopadhyay
For respondent no.4	:	Mr. Sabyasachi Chatterjee, Mr. Avik Ghatak, Ms. Debolina Chattaraj, Mr. Sushovan Dey
Hearing concluded on	:	09.02.2021
Judgment on	:	19.02.2021

Sabyasachi Bhattacharyya, J:-

1. IA No: CAN 1 of 2020 in WPA No. 7467 of 2020 is disposed of in view of the urgency involved and both the writ petitions are taken up for hearing.
2. The petitioner applied on October 7, 2017 before the Inspector General of Registration and the District Registrar for appointment as a

Muhammadan Marriage Registrar (M.M.R.) in the Panrui Police Station area.

- 3.** The Joint Commissioner of Stamp Revenue issued a letter to the District Registrar on January 4, 2018, requesting the latter to take necessary action for temporary appointment of MMR. The Assistant Secretary, Government of West Bengal, also issued a letter on July 5, 2018 to the Joint Commissioner of Stamp Revenue to take necessary steps on the basis of the petitioner's application for appointment to the post of M.M.R. (Temporary). Subsequently, the District Registrar published an advertisement inviting applications for appointment of MMR in respect of the Panrui Police Station, on which the petitioner again applied for the same post. On September 25, 2018, the District Registrar issued a letter to the Inspector General of Registration and Stamp Revenue, enclosing a copy of the advertisement and the petitioner's application, recommending his name for appointment in the said post. The Joint Commissioner issued a letter on November 16, 2018 to the District Registrar requesting him to issue a fresh advertisement, since one Abdul Aziz Chowdhury (respondent no.4) had also applied for appointment to the same post. Accordingly, another advertisement was published by the District Registrar on July 2, 2019, on which the petitioner reapplied.
- 4.** The District Registrar issued on July 2, 2019 a letter in terms of the advertisement, enclosing a list of all recommended candidates, where the petitioner's name appeared at Serial No.1. The said list has been

annexed at page 39 of the writ petition. In the remarks column against the petitioner's name, the Voter ID, AADHAAR and Ration Card were mentioned.

5. However, the name of respondent no.4 appeared at Serial No.6. In the remarks column, respondent no.4 was mentioned as "Overage".
6. Under the said list, a remark was recorded by the District Registrar, recommending the petitioner for the post of Temporary M.M.R. of Panrui P.S., based on residence, educational qualification, experience and other particulars, among all the candidates.
7. Learned counsel for the petitioner submits that on March 13, 2020 an interim order was passed in WPA No.4897 of 2020, restraining the respondent nos.2 and 3 from giving appointment in the post of M.M.R. within Panrui Police Station till March 31, 2020, which order was subsequently extended from time to time, by dint of the general extension order passed by a Special Bench of this court in view of the pandemic situation on March 24, 2020 and subsequently on June 23, 2020, lastly till September 30, 2020.
8. However, vide order dated June 25, 2020, the District Registrar, Birbhum, directed the erstwhile M.M.R. of the Sainthia P.S., who was acting as M.M.R. of the Panrui P.S., to hand over records of the Office of the M.M.R., Panrui P.S. area to respondent no.4, who was appointed as temporary M.M.R. of the latter P.S. Such order was passed in patent contravention of the interim order initially granted by this court and subsequently extended from time to time till September

30, 2020 by the general orders of extension passed by the Special Bench of this court.

9. Learned counsel for the petitioner argues that, as per Clause 3(b) of the Notification dated August 14, 1929 issued by the Law (Judicial) Department (Registration) of the Government of West Bengal, a three-tier procedure has been provided for making temporary appointment of M.M.R.s. The first step is nomination by the District Registrar. At the second stage, the District Registrar's nomination is to be submitted to the Government by the Inspector General of Registration who, if he disapproves of the District Registrar's nominees, may recommend the appointment of any other candidate. A temporary licence shall be issued in the third tier to the candidate approved by the local (State) Government.
10. Learned counsel further argues that, although the District Registrar had specifically recommended the name of the petitioner and the Inspector-General of Registration did not disapprove of the same, there was no option for the State Government but to approve such recommendation. However, despite respondent no.4 having been remarked to be overage in the list of candidates recommended by the District Registrar, age relaxation was given without rhyme or reason to the respondent no.4 in order to favour the said respondent and appoint him in the post-in-question.
11. Learned counsel for the petitioner places reliance on the settled legal proposition that if an order is passed in violation of an interim order of

a competent court, such order is void and a nullity in the eye of law.

The appointment of the respondent no.4 being in violation of the interim order granted by this Court, is a nullity, it is argued.

12. That apart, age relaxation was given to respondent no.4 in violation of the notification dated August 14, 2019 and is *de hors* the law.
13. Lastly, since the Inspector-General of Registration did not disapprove of the recommendation of the petitioner's name by the District Registrar, there was no scope for the Government to disapprove of the same, much less of the District Registrar to recommend the name of someone else, in this case respondent no.4, for the post of temporary M.M.R.
14. Learned counsel appearing for the State respondent places reliance on a report filed by the General Secretary, Law Department, indicating that the upper age limit of respondent 4 was relaxed vide order no.64-L(St.)/LW/0/4M- 101/2019 dated March 3, 2020 and was subsequently approved vide order no.63-L(St.)/4M- 101/2019 dated March 3, 2020; however, no licence has yet been issued in favour of respondent no.4 enabling him to work as temporary M.M.R. in view of the restraint order passed by this Court.
15. Learned counsel for the State respondent submits that Clause 4B of the relevant Notification dated August 14, 1929 empowers the State Government to relax the minimum age or upper age limit of a candidate for being appointed as a temporary Muhammadan Marriage Registrar. Such power was duly exercised in the present case, it is

submitted. That apart, it is argued that Annexure P-17 at page 55 of the writ petition, which is Memo No.235 dated July 16, 2020 issued by the District Registrar, amply shows the context of the appointment order being issued to respondent no.4. It is indicated therein that the interim restraint order passed by this Court came to the knowledge of the District Registrar subsequent to the appointment of respondent no.4, since it was not communicated to the Office of the District Registrar. Upon getting information regarding the general extension of such interim order subsequently, the District Registrar sought necessary direction from the Inspector-General of Registration and Commissioner of Stamp Revenue, West Bengal.

16. Learned counsel for the respondent-authorities places reliance on Clause 3(b) of the Notification dated August 14, 1929 to indicate that the three-tier step stipulated therein culminates in approval by the State Government. As such, it is submitted, the State Government had ample discretion to recommend the name of the respondent no.4 instead of the petitioner for the post-in-question.

17. Learned counsel places reliance on *Mallikarjuna Rao and others vs. State of Andhra Pradesh and others*, reported at (1990) 2 SCC 707, in support of the proposition that it is neither legal nor proper for the High Courts to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. The Constitution does not permit the court to take such course of action, it is submitted. Learned

counsel further places reliance on an unreported judgment of this court dated January 19, 2021, passed in WPA No.3159 of 2020 wherein a writ petition of a candidate for a similar post had been dismissed upon observing that there was sufficient discretion on the part of the IGR and the State Government to disapprove all the nomination made by the District Registrar and appoint someone else from the initial list of recommendations as M.M.R. for certain police stations.

- 18.** Thus, it is submitted that the appointment of Respondent No. 4 instead of the writ petitioner was valid in law and the writ petition ought to be dismissed.
- 19.** As far as the unreported judgment cited by the State respondent is concerned, the writ petitioner therein had challenged the fact that he was not appointed as a temporary M.M.R. for a particular police station, despite having been recommended by the District Registrar. In addition, this court was dealing with the contention that there cannot be more than one appointment of M.M.R. for a single police station which was turned down by this Court.
- 20.** However, the facts of the present writ petitions are different. A distinguishing feature here is the relaxation of the age of private respondent no.4 without recording any special reason as contemplated in Clause 4B of the relevant Notification, without which the question of bye-passing the petitioner for the post would not arise at all.

- 21.** The ratio laid down in *Mallikarjuna Rao* (supra) has been circumscribed by several decisions of the Supreme Court. Although it is undisputed that the interference under Article 226 of the Constitution has its limitations, the present case does not concern any direction or “adversary sermon” being issued to the executive. The test to be applied in the present case is whether the executive exceeded its exclusive domain and acted in colourable exercise of its authority *de hors* the governing rules and procedure, in which case this court has sufficient jurisdiction to interfere under Article 226. In the said case, a question arose as to whether the High Court/Administrative Tribunal can direct the State Government to frame or amend the existing statutory rules to alter the conditions of service of civil servants. Such a case would, undoubtedly, amount to legislation on the part of the judiciary, which is incompatible with the Constitutional scheme and would adversely affect the separation of powers.
- 22.** However, the contention that any interference under Article 226 of the Constitution is barred even when there is patent abuse of executive power and the executive traverses beyond its authority as conferred by law, hits at the very basic structure of the Constitution, of which judicial review is an integral part. On the very same logic which lent life to the ratio laid down in *Mallikarjuna Rao* (supra), that is, the jealous protection of separation of powers, the power of judicial review in such cases of abuse by the executive is also to be equally guarded.

- 23.** In the present case, the post-facto justification given by way of a report of the Joint Secretary, Law Department dated January 4, 2021, handed over in court on behalf of the State, is insufficient compliance with Section 4B of the Notification dated August 14, 1929. The explanation given therein was never reflected in the impugned order of appointment of the respondent no.4 as a temporary M.M.R. for the Panrui Police Station.
- 24.** A decision under Clause 4B of the Notification has to be visited by a special reason to be given in writing, which is absent in the present case.
- 25.** Moreover, the lame excuse that no licence was issued to the M.M.R. does not cut the ice, since the issuance of an order on June 25, 2020, appointing Abdul Aziz Chowdhury (respondent no.4) as temporary M.M.R. of the Panrui P.S. area is in direct contravention of the interim order passed by this court, as extended till September 30, 2020 by the general orders of extension passed by the Special Bench of this court. The ignorance of such extensions feigned by the District Registrar on the ground of lack of communication is unacceptable and cannot be pardoned. The District Registrar and the State Authorities ought to be more cautious in violating court orders insolently at their whims. It is clear as day-light from the order dated March 13, 2020 passed in WPA No.4897 of 2020 that the respondent-authorities were represented through counsel on the date of such order. The subsequent general extensions of all interim orders were, as evident from the orders

themselves, published in the official website of this court, communicated to subordinate courts and all tribunals as well as to the learned Advocate General and other authorities, with a request to circulate among lawyers, litigants and others interested. Such circulation and communication was more than sufficient to infer knowledge of the District Registrar regarding the subsistence of the interim order in the matter. In fact, the act of the District Registrar in giving appointment to respondent no.4 in the teeth of the interim order of this court borders on the contumacious and reeks of potent mala fides and favouritism. However, this court chooses to stop short of issuing a rule of contempt on such violation only because the instrument of contempt is an extreme measure, not to be used at will for unworthy officials who, despite holding the responsible office of District Registrar, have the temerity of feigning ignorance of such circulated general orders.

- 26.** Thus, the appointment of respondent no.4 vide the order of the District Registrar dated June 25, 2016, which is impugned in the present writ petition, is patently illegal and without jurisdiction on such score as well.
- 27.** That apart, for the State Government to approve of a candidate under the three-tier system envisaged in Clause 3(b) of the Notification dated August 14, 1929, there has to be a prior nomination by the District Registrar, forwarded to the Government by the Inspector-General of Registration. In the present case, the District Registrar specifically

recommended the petitioner's name for such approval and there is nothing on record to show that the IGR disapproved of the petitioner's name on any score, as reflected from the impugned order. The subsequent nomination of respondent no. 4 was not preceded by disapproval by the IGR of the petitioner's name. The approval by the State Government, although discretionary, is not an unfettered tool to be used as a means of favouritism or a frill of fancy of the Government. Such approval has to be preceded by proper nominations which, in the present case, was only done in respect of the petitioner. In view of the age relaxation of respondent no. 4 being held to be *de hors* the extant procedure, it was the petitioner who was entitled to the post of temporary M.M.R. of the Panrui Police Station area.

- 28.** Hence, WPA No.4897 of 2020 and WPA No.7467 of 2020 are allowed, thereby setting aside the order of the District Registrar, Birbhum dated June 25, 2020 appointing private respondent no.4 as temporary Muhammadan Marriages Registrar (M.M.R.) for the Panrui Police Station area and directing respondent no.1 to immediately give appointment to the petitioner, namely, Newaz Sharif, as temporary Muhammadan Marriage Registrar for the Panrui Police Station area. Such appointment will be formally given at the earliest, positively by three weeks from date.
- 29.** There will be no order as to costs.

- 30.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)